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Role of UNCITRAL in promoting the rule of law at the national and international levels

Note by the Secretariat

Contents

	<i>Page</i>
I. Introduction	2
II. Recent General Assembly resolutions highlighting UNCITRAL's role in promoting the rule of law	3
A. Resolution 73/207 on the rule of law at the national and international levels.	3
B. Resolution 73/197 on the report of UNCITRAL on the work of its fifty-first session	3
III. History of the consideration by the Commission of its role in promoting the rule of law	4
IV. Relevance of texts to be considered by the Commission at its fifty-second session, in 2019, to the promotion of the rule of law and the implementation of the Sustainable Development Goals	5
A. Texts on enterprise group insolvency	6
B. Model legislative provisions on public-private partnerships with a legislative guide	6
C. Practice Guide to the UNCITRAL Model Law on Secured Transactions	7
D. Texts in the area of international commercial mediation	8
E. Notes on the main issues of cloud computing contracts	9
V. Suggestions for consideration of the rule of law agenda item at the Commission's fifty-second session, in 2019	10
 Annex	
A brief overview of the consideration of the rule of law agenda item in the Commission since 2008	11



I. Introduction

1. At its fifty-first session, the Commission considered the proposal to generate discussion within the Commission on the agenda item “Role of UNCITRAL in promoting the rule of law at the national and international levels” and to improve the way the Commission handled that agenda item. The Commission considered the possibility of broadening the discussion of its role in promoting the rule of law at the national and international levels to a discussion of the way the work of UNCITRAL relates to the 2030 Agenda for Sustainable Development and 17 Sustainable Development Goals, both with regard to the instruments developed by UNCITRAL and with regard to assistance to States in their achievement of the Goals. It was suggested that, in order for the Commission to achieve a more meaningful consideration of that agenda item, the Secretariat could prepare a paper outlining the way that the UNCITRAL instruments and texts relate to the Sustainable Development Goals and identifying concrete issues to be discussed by the Commission. It was further suggested that that paper could also take stock of the evolution of the agenda item relating to the rule of law over several Commission meetings and how the Commission could ensure that its work reflected the broader development agenda of the United Nations as a whole. It was further decided that a discussion would take place at the fifty-second session of the Commission, in 2019, on the basis of the report to be prepared by the Secretariat.¹

2. This note is submitted pursuant to that decision of the Commission. In chapter II, it sets out a summary of the most recent resolutions of the General Assembly relevant to the consideration of the role of UNCITRAL in the promotion of the rule of law. Chapter III and an annex to this note take stock of the evolution of the consideration of the agenda item in the Commission. Chapter IV outlines relevance of the texts that will be before the Commission for finalization and adoption at its fifty-second session, in 2019, to the promotion of the rule of law and the implementation of the Sustainable Development Goals. (The relevance of UNCITRAL existing texts and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)² (the New York Convention) to the promotion of the rule of law, the implementation of international development agenda and post-conflict reconstruction has already been highlighted on earlier occasions, including in the General Assembly resolutions and decisions of the Commission on those texts and in the rule of law panel discussions held during the sessions of the Commission.³) Chapter V suggests actions by the Commission under this agenda item at its fifty-second session.

¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 264–267.

² United Nations, *Treaty Series*, vol. 330, No. 4739.

³ See e.g., *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 412–420, and *ibid.*, *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, paras. 302–315, as regards UNCITRAL arbitration, conciliation and public procurement texts; *ibid.*, *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 321–328, as regards those texts as well as UNCITRAL texts in the areas of sale of goods, insolvency law and electronic commerce; *ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 202–210, as regards those texts as well as UNCITRAL texts in the areas of security interests and privately financed infrastructure projects; *ibid.*, *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 278–287, as regards the New York Convention, the Technical Notes on Online Dispute Resolution, the UNCITRAL transparency standards and other UNCITRAL texts in the area of dispute settlement; and most recently, *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 232 as regards the Singapore Convention on Mediation and other texts adopted by the Commission at its fifty-first session. For other occasions when UNCITRAL texts were discussed during the rule of law panel discussions in the Commission, see the annex to this note, years of 2014 to 2017.

II. Recent General Assembly resolutions highlighting UNCITRAL's role in promoting the rule of law

A. Resolution 73/207 on the rule of law at the national and international levels

3. By paragraph 20 of its resolution 73/207 of 20 December 2018, adopted upon recommendation of the Sixth Committee (A/73/553), the General Assembly invited the International Court of Justice, the United Nations Commission on International Trade Law and the International Law Commission to continue to comment, in their respective reports to the General Assembly, on their current roles in promoting the rule of law. By paragraph 23 of the same resolution, the General Assembly invited Member States to focus their comments during the upcoming Sixth Committee debate on the subtopic "Sharing best practices and ideas to promote the respect of States for international law".

4. By other paragraphs of the same resolution, the General Assembly, inter alia:

(a) Encouraged the Secretary-General and the United Nations system to accord high priority to rule of law activities and to systematically address, as appropriate, aspects of the rule of law in relevant activities, recognizing the importance of the rule of law to virtually all areas of United Nations engagement (paras. 4 and 14);

(b) Reaffirmed its commitment to working tirelessly for the full implementation of the 2030 Agenda for Sustainable Development, and recalled that the goals and targets were integrated and indivisible and balanced the three dimensions of sustainable development (para. 7);

(c) Recognized the role of multilateral and bilateral treaties and treaty processes in advancing the rule of law, and encouraged States to further consider the promotion of treaties in areas where international cooperation could benefit from treaties (para. 8);

(d) Stressed the need to strengthen support to Member States, upon their request, in the domestic implementation of their respective international obligations through enhanced technical assistance and capacity-building and reiterated its call for greater evaluation of the effectiveness of such activities, including possible measures to improve the effectiveness of those capacity-building activities (paras. 11 and 12);

(e) Reiterated its request to the Secretary-General to ensure greater coordination and coherence among the United Nations entities and with donors and recipients (para. 12); and

(f) Encouraged further dialogue and the sharing of national practices and expertise in strengthening the rule of law through access to justice and in that regard recognized the role of knowledge and technology, including in judicial systems, and stressed the need to intensify the assistance extended to Governments upon their request (para. 18).

B. Resolution 73/197 on the report of UNCITRAL on the work of its fifty-first session

5. By paragraph 16 of resolution 73/197, the General Assembly endorsed the conviction of the Commission that the implementation and effective use of modern private law standards in international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law

Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General.

6. By paragraph 17 of the same resolution, the General Assembly also noted the role of the Commission in promoting the rule of law, respective activity in the Commission at its fifty-first session⁴ and the comments transmitted by the Commission, pursuant to paragraph 25 of General Assembly resolution 72/119 of 7 December 2017, highlighting the role in the promotion of the rule of law of the texts adopted or approved by the Commission and of its ongoing work, in particular through wide dissemination of international commercial law, including across the United Nations system.⁵

7. By paragraph 18 of the same resolution, the General Assembly noted with satisfaction that, in paragraph 8 of the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, adopted by consensus as resolution 67/1 of 24 September 2012, Member States recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship and, in this regard, commended the work of the Commission in modernizing and harmonizing international trade law and that, in paragraph 7 of the declaration, Member States expressed their conviction that the rule of law and development were strongly interrelated and mutually reinforcing.

8. By paragraph 19 of the same resolution, the General Assembly also noted with satisfaction that, in paragraph 89 of the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted by the General Assembly by consensus as resolution 69/313 of 27 July 2015, States endorsed the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field.

III. History of the consideration by the Commission of its role in promoting the rule of law

9. The item “Role of UNCITRAL in promoting the rule of law at the national and international levels” has been on the agenda of the Commission since its forty-first session, in 2008,⁶ in response to the General Assembly’s invitation to the Commission to comment, in its report to the General Assembly, on the Commission’s current role in promoting the rule of law.⁷ At its forty-first to fifty-first sessions, in 2008 to 2018, respectively, the Commission, in its annual reports to the General Assembly, transmitted comments on its role in promoting the rule of law at the national and international levels, including in the post-conflict reconstruction context. It expressed its conviction that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group supported by the Rule of Law Unit in

⁴ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 230–231.

⁵ Ibid., chap. XV.

⁶ For the decision of the Commission to include the item on its agenda, see *ibid.*, *Sixty-second Session, Supplement No. 17 (A/62/17)*, part two, paras. 111–113.

⁷ General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; 66/102, para. 12; 67/97, para. 14; 68/116, para. 14; 69/123, para. 17; 70/118, para. 20; 71/148, para. 22; and 72/119, para. 25.

the Executive Office of the United Nations Secretary-General.⁸ This view was endorsed by the General Assembly.⁹

10. The Commission considered it essential to keep a regular dialogue with the Rule of Law Coordination and Resource Group through the Rule of Law Unit and to keep abreast of progress made in the integration of the work of UNCITRAL into the United Nations joint rule of law activities. To that end, it requested the Secretariat to organize briefings by the Rule of Law Unit biannually, when sessions of the Commission were held in New York.¹⁰ The briefings consequently took place at the Commission's forty-fifth, forty-seventh, forty-ninth and fifty-first sessions, in 2012, 2014, 2016 and 2018, respectively.¹¹

11. The annex to this note sets out a brief history of the consideration of the agenda item in the Commission since 2008.

IV. Relevance of texts to be considered by the Commission at its fifty-second session, in 2019, to the promotion of the rule of law and the implementation of the Sustainable Development Goals

12. As the Commission was informed at its forty-ninth session, in 2016,¹² the UNCITRAL website contains a web page that explains the role of UNCITRAL in the implementation of the Sustainable Development Goals, including its rule-of-law-related target.¹³ While stressing that UNCITRAL's contribution to the achievement of the Sustainable Development Goals proceeds on several fronts and touches upon a number of different and interrelated areas, the web page focuses on nine Goals most relevant to the work of UNCITRAL: Sustainable Development Goals 1, 4, 5, 8, 9, 10, 12, 16 and 17 in so far as they aim at resource mobilization, job creation, promotion of entrepreneurship, access to financial services, justice and information as well as good governance and increased participation of developing countries in the institutions of global governance.

13. The Commission has considered the interrelationship between the promotion of the rule of law in commercial relations and sustained economic development in many instances, including in the context of its consideration of its role in promoting the rule of law at the national and international levels (see the annex to this note, in particular the years of 2012–2016). Such interrelationship is usually highlighted in Commission decisions adopting texts and subsequently in General Assembly resolutions on those

⁸ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 386; *ibid.*, *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 413–419; *ibid.*, *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 313–336; *ibid.*, *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 299–321; *ibid.*, *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 195–227; *ibid.*, *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 267–291; *ibid.*, *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 215–240; *ibid.*, *Seventieth Session, Supplement No. 17* (A/70/17), paras. 318–324; *ibid.*, *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 317–342; *ibid.*, *Seventy-second Session, Supplement No. 17* (A/72/17), paras. 435–441; and *ibid.*, *Seventy-third Session, Supplement No. 17* (A/73/17), paras. 225–233.

⁹ General Assembly resolutions 63/120, para. 11; 64/111, para. 14; 65/21, paras. 12 to 14; 66/94, paras. 15 to 17; 67/89, paras. 16 to 18; 68/106, paras. 12 to 14; 69/115, para. 12; 70/115, para. 11; 71/135, para. 13; 72/113, para. 18; and 73/197, para. 16.

¹⁰ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 335.

¹¹ *Ibid.*, *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 199–210; *ibid.*, *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 229–233; *ibid.*, *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 313–317; and *ibid.*, *Seventy-third Session, Supplement No. 17* (A/73/17), paras. 230–231.

¹² *Ibid.*, *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 254 and 309.

¹³ <https://uncitral.un.org/en/about/sdg>.

texts. As noted in paragraph 7 above, such interrelationship was also highlighted in paragraphs 7 and 8 of the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels.

14. At its fifty-second session, in 2019, the Commission will have before it for finalization and adoption a number of texts that further demonstrate that interrelationship as explained below.

A. Texts on enterprise group insolvency

Relevance to Sustainable Development Goals 8, 10 and 17.

15. Texts on enterprise group insolvency, which upon their adoption by the Commission, would supplement the existing insolvency texts of UNCITRAL, are expected to contribute to coordination and cooperation in cases of insolvency of enterprise group member(s), either located within the same or in different jurisdictions. Those texts comprise the Model Law on Enterprise Group Insolvency, its guide to enactment and a supplement to part four of the UNCITRAL Legislative Guide on Insolvency Law that would address obligations of directors of enterprise group companies in the period approaching insolvency.

16. Effective insolvency regimes are increasingly seen as a means of encouraging economic development and investment and of fostering entrepreneurial activity and preserving employment, while effective coordination and cooperation in cross-border insolvency is becoming more important in a world in which it is easy for enterprises and individuals to have assets in more than one State and to move assets across borders. The fair, efficient and effective administration of insolvencies improve chances of rescuing financially troubled but viable businesses and finding solutions that would be the most advantageous for a debtor, its creditors and other interested persons and in the case of an enterprise group, for the enterprise group as a whole. Effective coordination and cooperation in cross-border insolvency make it less likely that debtors' assets are concealed or dissipated.

17. The texts are thus expected to contribute to the implementation of Sustainable Development Goals 8, 10 and 17, in particular target 8.3 (Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro, small and medium-sized enterprises, including through access to financial services), target 10.b (Encourage official development assistance and financial flows, including foreign direct investment, to States where the need is greatest, in particular least developed countries, African countries, small island developing States and landlocked developing countries, in accordance with their national plans and programmes) and target 17.5 (Adopt and implement investment promotion regimes for least developed countries).

B. Model legislative provisions on public-private partnerships with a legislative guide

Relevance to Sustainable Development Goals 1, 8, 9, 10, 12, 16 and 17.

18. Sustainable Development Goal 17 (Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development) recognize the importance of public-private partnerships (PPPs) for implementation of all Sustainable Development Goals. Target 17.17 in particular is about encouraging and promoting effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships.

19. Model legislative provisions on public-private partnerships with a legislative guide (the PPPs texts), which will be before the Commission at its fifty-second session, in 2019, are intended to assist States in planning, designing and implementing PPPs with long-term sustainability and resilience in mind by factoring economic, social and environmental dimensions of sustainable development. Legislative recommendations contained in the PPPs texts were prepared taking into account that in entering into and implementing PPPs, States often need to balance many competing objectives. For example, it is often difficult to balance efficiency with good governance, or objectivity and equal treatment of bidders with the need to factor in PPPs socioeconomic policies and promotion of innovation and creativity. In addition, the objectives of transparency, accountability and effective public oversight need often be balanced with the need to protect confidential information and essential interests of States and to avoid unjustifiable disruptions in the preparation, award and implementation of PPPs.

20. The PPPs texts offer States best practice guidance on how to deal with those conflicting goals and interests in their domestic legal framework on PPPs. As such, the texts expect to contribute, in addition to target 17.17 (see para. 18 above), to a number of other targets, such as targets 1.a, 10.b, 17.1, 17.3, 17.5 and 17.16 addressing resource mobilization, target 8.3 addressing creativity and innovation, target 9.a addressing resilient infrastructure and target 12.7 addressing sustainable procurement practices.

21. In addition, many provisions found in the PPPs texts facilitate the implementation of the United Nations Convention against Corruption.¹⁴ In particular, the PPPs texts, aligned in that respect with the UNCITRAL Model Law on Public Procurement and its Guide to Enactment, contain essential transparency, objectivity and competition safeguards against abuses in the award and implementation of a PPP contract, including in the introduction of changes in the awarded contract and in the treatment of unsolicited proposals. As such, the PPPs texts expect to contribute to the implementation of Sustainable Development Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), in particular target 16.5 (Substantially reduce corruption and bribery in all their forms), target 16.6 (Effective, transparent and accountable institutions) and target 16.10 (Public access to information).

C. Practice Guide to the UNCITRAL Model Law on Secured Transactions

Relevance to Sustainable Development Goals 8, 9 and 17.

22. The Commission will have before it for finalization and adoption at its fifty-second session, in 2019, a draft Practice Guide to the UNCITRAL Model Law on Secured Transactions. The Model Law on Secured Transactions adopted by UNCITRAL in 2016¹⁵ enables and facilitates the use of movable assets (e.g., inventory and receivables financing) as collateral in secured transactions. Such assets may be the main or only type of asset that some businesses, such as micro, small and medium-sized enterprises (MSMEs), have. The Model Law thus promotes the access of businesses, in particular MSMEs, to financial services, including affordable credit.

23. The work on a practice guide was undertaken recognizing that the enactment by States of the Model Law might be insufficient without parallel capacity-building among financiers, judges, legal practitioners and other persons affected by secured

¹⁴ United Nations, *Treaty Series*, vol. 2349, p. 41.

¹⁵ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 119.

transactions. Financiers might not automatically embrace new tools offered by a new secured transactions law until they have the practical capacity to use them effectively and have gained the trust that the system will properly support such use.

24. The text of a practice guide that will be before the Commission at its session in 2019 is intended to develop the practical ability of parties involved in secured transactions to engage more efficiently in credit transactions with reduced risk of loss from default. It is thus expected to contribute to the implementation of Sustainable Development Goal 17 (Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development), in particular target 17.9 on implementing effective and targeted capacity-building in developing countries.

25. By facilitating the enactment, understanding and use of the Model Law that promotes the availability of credit at a lower cost, a practice guide is also expected to contribute to the implementation of Sustainable Development Goal 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all), in particular target 8.3 (Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro, small and medium-sized enterprises, including through access to financial services) and target 8.10 (Strengthen the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all). (Access to financial services is also addressed in Sustainable Development Goal 9 (Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation), target 9.3 (Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets).).

D. Texts in the area of international commercial mediation

Relevance to Sustainable Development Goals 16 and 17.

26. At its fifty-second session, in 2019, the Commission will have before it texts in the area of international commercial mediation: notes on organizing mediation proceedings; mediation rules; and a guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018.¹⁶ Those texts are expected to enhance the capacity of intended users to use the Singapore Convention on Mediation¹⁷ and the Model Law.

27. Commercial obligations may need to be enforced through dispute settlement. An essential prerequisite for an effective dispute settlement is the ability to enforce, including across borders, an award or a settlement agreement reached through a dispute settlement mechanism or procedure in a cost-effective way. Otherwise, performance of commercial obligations is not achieved, which disincentivizes cross-border commerce. Upon adoption of the Singapore Convention on Mediation, the General Assembly recognized the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations.¹⁸ Non-adversarial settlement methods, in particularly mediation, are seen to be swifter and less expensive than adversarial dispute settlement, benefiting commercial enterprises, promoting long-term and cross-border commercial transactions, and offering States possible cost savings in the administration of justice.

¹⁶ For the text of the Model Law, see *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, annex II. For the discussion of supplementary texts, see *ibid.*, paras. 67 and 254.

¹⁷ See General Assembly resolution [73/198](#).

¹⁸ *Ibid.*, the third preambular paragraph.

28. The texts that will complement the Singapore Convention on Mediation and the Model Law expect to contribute to the implementation of Sustainable Development Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), in particular target 16.3 (Promote the rule of law at the national and international levels and ensure equal access to justice for all) and target 16.6 (Effective, transparent and accountable institutions), as well as Sustainable Development Goal 17 (Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development), in particular target 17.9 on implementing effective and targeted capacity-building in developing countries.

E. Notes on the main issues of cloud computing contracts

Relevance to Sustainable Development Goals 8 and 9.

29. The Notes on the Main Issues of Cloud Computing Contracts prepared by the Secretariat will be before the Commission at its fifty-second session, in 2019, for approval and issuance as an online tool. They address the main issues of cloud computing contracts with reference to contractual practices, relevant technical standards and, where available, legislation, but they are not of a legislative nature.

30. The preparation of a descriptive document listing issues relevant when reviewing contracts for cloud computing services was considered particularly useful for start-ups and MSMEs that may find cloud computing solutions especially attractive because they eliminate or significantly reduce the need for the capital investment in information technology infrastructure. The economy of scale achieved by pooling computing resources allows providers to offer access to state-of-the-art computing services to multiple customers at lower fees on a pay-as-you-go basis. The economic benefits at the microeconomic level may produce the positive impact at a macroeconomic level on businesses and international trade.

31. At the same time, cloud computing is not risk-free. It may involve loss of exclusive control over data and other content placed in the cloud and lead to data loss, privacy and confidentiality concerns, business interruption, reputational damage and liability for non-compliance with law requirements. Any ambiguity in defining the terms of provision of cloud computing services and the roles and responsibilities related to data ownership, access control and maintenance of infrastructure may result in security and other risks. MSMEs in particular may lack expertise to assess risks of entering into cloud computing contracts and implications of standard terms that are often offered by providers.

32. The Notes may be helpful to parties that consider entering into a cloud computing contract. The Notes may be useful for parties negotiating a cloud computing contract as well as for customers reviewing standard terms offered by providers to determine whether those terms sufficiently address the customer's needs. As an online tool, the Notes may reach intended users in a more effective way. The Notes are expected therefore to contribute to the implementation of Sustainable Development Goal 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all), in particular target 8.3 (Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro, small and medium-sized enterprises, including through access to financial services). They are also relevant for the implementation of Sustainable Development Goal 9, target 9.C that addresses access to information and communications technology.

V. Suggestions for consideration of the rule of law agenda item at the Commission's fifty-second session, in 2019

33. The Commission may wish to take note of the General Assembly resolutions referred to in chapter II above. In formulating and transmitting its comments to the General Assembly this year in response to the invitation contained in paragraph 20 of General Assembly resolution 73/207, the Commission may wish to take into account that the upcoming debates of the Sixth Committee under the rule of law agenda item will focus on the subtopic "Sharing best practices and ideas to promote the respect of States for international law" (see para. 3 above). The Commission may wish to recall its consideration of issues relevant to that subtopic at its sessions in 2009, 2010 and 2015–2017 (see the annex to this note).

34. The Commission may wish to note that the newly introduced programme budget planning and performance framework requires a close alignment of the programme of each United Nations entity with the Sustainable Development Goals as the contemporary embodiment of the long-term purposes of the United Nations enshrined in the United Nations Charter. The internal oversight bodies of the United Nations system periodically evaluate United Nations entities against the implementation of the Sustainable Development Goals (the United Nations Office of Legal Affairs, including the UNCITRAL secretariat, was the subject of such evaluation in 2018).

35. In the light of those developments and the expected finalization and adoption or approval for publication of texts in the areas of insolvency law, PPPs, secured transactions, mediation and cloud computing, the Commission may wish to highlight in its decisions on those texts their expected input to the implementation of the Sustainable Development Goals (see paras. 15–32 above). The Commission may also wish to specify the expected input of its ongoing work on simplified incorporation for MSMEs, expedited arbitration proceedings, investor-State dispute settlement (ISDS) reform, electronic commerce (identity management and trust services) and judicial sale of ships to sustainable development. Furthermore, in considering a report of the colloquium on contractual networks, a proposal for possible future work on digital economy and other proposals for possible future work, the Commission may wish to consider the expected contribution of that work to the Sustainable Development Goals.

36. The Commission may wish to request States, the Secretariat, organizations and institutions to continue their efforts towards increasing awareness of the role of UNCITRAL standards and activities for the promotion of the rule of law at the national and international levels and the implementation of the Sustainable Development Goals. Such opportunities might in particular arise in conjunction with:

(a) The High-Level Political Forum on Sustainable Development "Empowering people and ensuring inclusiveness and equality" (New York, 9–15 July 2019), which will conduct an in-depth review of the implementation of several Sustainable Development Goals of relevance to UNCITRAL, such as Sustainable Development Goals 8, 10, 16 and 17; and

(b) A special session of the General Assembly on challenges and measures to prevent and combat corruption and strengthen international cooperation, which will take place in the first half of 2021 with the preparatory process taken place under the auspices of the Conference of States Parties to the United Nations Convention against Corruption.¹⁹

37. Finally, the Commission may wish to reiterate the view that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group supported by the Rule of Law Unit in the Executive Office of the United Nations Secretary-General (see para. 9 above).

¹⁹ See General Assembly resolution 73/191.

Annex

A brief overview of the consideration of the rule of law agenda item in the Commission since 2008

Topic and main points made	References
2008 (main theme: Inventory of the United Nations rule of law activities)	
<ul style="list-style-type: none"> • The Commission was informed about the ongoing inventory of the United Nations rule of law activities for a report by the Secretary-General. • The Commission was of the view that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General. That view was repeated in subsequent sessions of UNCITRAL and endorsed by the General Assembly. 	A/63/17 , paras. 385–386
2009 (main theme: Promoting the rule of law at the international level)	
<ul style="list-style-type: none"> • The Commission considered its role in promoting the rule of law at the international level with reference to its mandate of unification, harmonization and modernization of the law of international trade, in particular coordination and cooperation aspects of that mandate as relevant to prevention of conflicting rules or interpretations. • It emphasized the role of UNCITRAL arbitration and conciliation texts for peaceful and independent adjudication of disputes in the context of trade and investment, including between States. • It referred to the upcoming work on ISDS, touching on issues of State responsibilities, transparency and human rights. • It also recognized the role of UNCITRAL texts in assisting States to implement their international commitments, with a specific reference to the role of UNCITRAL public procurement texts in implementing article 9 of the United Nations Convention against Corruption, and of the UNCITRAL Model Law on International Commercial Arbitration in implementing the New York Convention. 	A/64/17 , paras. 412–420
2010 (main theme: Laws and practices of Member States in implementing international law)	
<ul style="list-style-type: none"> • The Deputy Secretary-General delivered the opening remarks welcoming the discussion of the rule of law in trade and commerce and highlighting the relevance of the work of UNCITRAL to the United Nations rule of law agenda. • The Director of the Rule of Law Unit informed the Commission about the mandates of the Unit and the Rule of Law Group. • Two panel discussions were held: on laws and practices of States in the domestic implementation and interpretation of UNCITRAL texts (perspectives of recipient States on the work of UNCITRAL); and on coordination and coherence of technical assistance and capacity-building in the areas of UNCITRAL work, and mechanisms and criteria for evaluating the effectiveness of such assistance. • The Commission took a decision as regards holding biannual rule of law briefings and requested the Secretariat to take steps towards more effective implementation and evaluation of its technical assistance activities. 	A/65/17 , paras. 313–336
2011 (main theme: Rule of law and transitional justice in conflict and post-conflict situations)	
<ul style="list-style-type: none"> • During the panel discussion, the Commission heard examples of the use and impact of its standards in post-conflict societies. 	A/66/17 , paras. 299–321

Topic and main points made	References
<ul style="list-style-type: none"> The Commission took decisions as regards its role in post-conflict reconstruction and was informed about an upcoming high-level meeting of the General Assembly on the rule of law. 	
2012 (main theme: High-level Meeting on the Rule of Law and its outcome document)	
<ul style="list-style-type: none"> The Commission heard opening remarks by the Legal Counsel. The Commission had a rule of law briefing by the Director of the Rule of Law Unit. It also had a briefing by a co-facilitator of informal consultations on an outcome document of the High-level Meeting. It heard statements by States and international organizations on the link between the rule of law and economic development, rule of law as a component of the information society, and the role of UNCITRAL standards and technical assistance and coordination activities in those contexts. The Commission took a number of decisions as regards the High-level Meeting, including the address of the UNCITRAL Chair at the High-level Meeting. The Commission formulated its messages to the High-level Meeting. It suggested subtopics for future Sixth Committee rule-of-law debates (“Means of achieving effective coordination of rule-making activities at the regional and international levels”, “Access to justice through alternative means of dispute resolution” and “Mutually reinforcing impact of economic development and the rule of law”). 	A/67/17 , paras. 195–227
2013 (main themes: Outcomes of the High-level Meeting on the Rule of Law; and The rule of law and the peaceful settlement of international disputes)	
<ul style="list-style-type: none"> The Commission heard reports of its Chair and secretariat about the outcomes of the High-Level meeting, including UNCITRAL-related paragraphs in the Rule of Law Declaration. The Commission was informed about the commencement of work of the Open Working Group on Sustainable Development Goals (the OWG on SDGs) and the Intergovernmental Committee of Experts on Sustainable Financing. The panel discussion was held on the role of the New York Convention and the UNCITRAL commercial dispute settlement standards, including technical notes on online dispute resolution being prepared at that time and the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, in the peaceful settlement of international disputes. In its comments to the General Assembly, the Commission emphasized the importance of its standards and technical assistance, cooperation and coordination activities in the area of dispute settlement. The Commission was informed about a draft guidance note of the Secretary-General on the promotion of the rule of law in commercial relations. 	A/68/17 , paras. 267–291
2014 (main themes: Developments in the OWG on SDGs; and UNCITRAL’s role in the promotion of the rule of law through facilitating access to justice)	
<ul style="list-style-type: none"> The Commission heard a keynote speech of the Special Representative of the Secretary-General of the United Nations on Post-2015 Development Planning, a statement by the Director-General of International Development Law Organization (IDLO), a statement by the General Counsel of the Global Compact Office about the Business Engagement Architecture and statements by States and international organizations that underscored the link between efficient contract enforcement and decreased informality, improved access to credit and increase in trade. The Commission had a rule of law briefing by the Director of the Rule of Law Unit. 	A/69/17 , paras. 215–240

Topic and main points made	References
<ul style="list-style-type: none"> • The Commission was informed about national practices and United Nations projects in strengthening the rule of law through access to justice. Enforcement of contracts, insolvency proceedings, protection of security interests, legal empowerment and public procurement were discussed in that context. • Examples of mechanisms aimed at improving case management and speed of enforcement were provided (creation of e-courts, small claims and mobile courts). • In its comments to the General Assembly, the Commission emphasized the role of its standards in the normative protection, capacity to seek remedy, capacity to provide effective remedies and modernization of review procedures. • The Commission was informed about a statement by the UNCITRAL Chair in the OWG on SDGs and a side event organized by the UNCITRAL secretariat on the margins of the eighth session of the OWG on SDGs on the enabling environment for rule-based business, investment and trade (New York, 6 February 2014). • The Commission was informed about developments as regards a draft guidance note of the Secretary-General on the promotion of the rule of law in commercial relations. 	
<p>2015 (main themes: Developments in the OWG on SDGs and the Intergovernmental committee of experts on Sustainable Financing; and The role of UNCITRAL multilateral treaty processes in promoting and advancing the rule of law)</p>	
<ul style="list-style-type: none"> • The Commission heard reports about developments as regards the formulation of sustainable development goals. • It also heard statements by experts as regards UNCITRAL and national practices with: (a) initiation of a treaty-making process; (b) treaty-making processes; (c) treaty implementation; and (d) the linkages among those three stages and the impact of each separately and all cumulatively on the quality of a treaty, its acceptance by States and intended end-users, and the promotion of the rule of law in commercial relations. • In its comments to the General Assembly, the Commission brought to the attention of the General Assembly issues related to multilateral treaty processes that require attention of States. 	<p>A/70/17, paras. 294–324</p>
<p>2016 (main themes: Practices of States in the implementation of multilateral treaties emanated from the work of UNCITRAL; and Practical measures to facilitate access to justice in the commercial law context, in particular by MSMEs)</p>	
<ul style="list-style-type: none"> • The Commission had a rule of law briefing by the Director of the Rule of Law Unit. • It was informed about a new web page at the UNCITRAL website that gave a general idea about the role of UNCITRAL in the implementation of the Sustainable Development Goals. • The Commission was also informed about inclusion of a UNCITRAL-related paragraph in the Addis Ababa Action Agenda and the formulation of indicators of the Sustainable Development Goals. • It endorsed the participation of its secretariat in the Inter-Agency Task Force on Financing for Development. • The Commission heard statements as regards practices of States in the implementation of multilateral treaties emanated from the work of UNCITRAL. • It also heard statements as regards practical measures to facilitate access to justice in the commercial law context, in particular by MSMEs. • In its comments to the General Assembly, the Commission cross-referred to the comments already transmitted at its earlier session on similar themes. 	<p>A/71/17, paras. 303–342</p>

Topic and main points made	References
2017	
(main theme: Ways and means to further disseminate international law to strengthen the rule of law)	
<ul style="list-style-type: none"> • The Commission heard statements by experts highlighting the importance of outreach to MSMEs and the role of education on commercial law matters, moot competitions, CLOUT and digests. • Examples of the use of UNCITRAL texts in technical assistance, legal diagnostics, ranking, benchmarking, assessment methodologies and similar tools were provided. • The Commission also heard examples of UNCITRAL texts being used to devise information technology solutions for implementing commercial law reform, in particular electronic public procurement portals. • It was also informed about examples of information technology-based solutions for expediting legal research, including cross-border research, facilitating contract drafting and achieving consistent results in jurisprudence. • Challenges faced by international intergovernmental organizations in becoming innovative developers of legal research technology were highlighted. • In its comments to the General Assembly, the Commission highlighted the importance of its dissemination activities, recognizing in that context the role of States, the General Assembly, UNCITRAL partners, including academia and the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. It expressed concern about the proliferation of online tools designed to assist with international commercial law reform but not representing internationally agreed commercial law standards and highlighted the need to remove obstacles to innovative dissemination practices faced by the United Nations. • The Commission reiterated the need for better integration of its work in the broader agenda of the United Nations and that achieving that result would in itself contribute to further dissemination of international commercial law to strengthen the rule of law. To that end, it recommended that the Secretariat should take additional steps towards dissemination across the United Nations system, in particular to legal advisers, of the Guidance Note on Strengthening United Nations Support to States, Upon Their Request, to Implement Sound Commercial Law Reforms, endorsed by the Commission at its 2016 session. • The Commission requested the Secretariat to consider informing the Commission in writing about relevant developments related to topics on which the Commission would be expected to provide comments to the General Assembly under this agenda item at future sessions. 	<p>A/72/17, paras. 421–441</p>
2018 (No specific main theme)	
<ul style="list-style-type: none"> • The Commission had a rule of law briefing by the Director of the Rule of Law Unit. • In its comments to the General Assembly, the Commission noted the expected role of the texts adopted at the session and of the ongoing work in the areas of identity management, ISDS and PPPs for the promotion of the rule of law. • The Commission considered the possibility of broadening the discussion of its role in promoting the rule of law at the national and international levels to a discussion of the way the work of UNCITRAL relates to the 2030 Agenda for Sustainable Development and 17 Sustainable Development Goals, both with regard to the instruments developed by UNCITRAL and with regard to assistance to States in their achievement of the Goals. • It was decided that a discussion would take place at the fifty-second session of the Commission, in 2019, on the basis of the report to be prepared by the Secretariat. 	<p>A/73/17, paras. 225–233</p>